



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu

WATER

IN THE MATTER OF THE JOINT PETITION OF)	ORDER APPROVING SALE
NEW JERSEY-AMERICAN WATER COMPANY, INC.,)	OF ASSETS, ET AL
AND THE VALLEY ROAD SEWERAGE COMPANY)	
FOR, AMONG OTHER THINGS, APPROVAL OF AN)	ORDER APPROVING
ASSET PURCHASE AGREEMENT; FRANCHISE)	DISCONTINUANCE OF
EXTENSION AND MUNICIPAL CONSENT ORDINANCE;)	SERVICE
DISCONTINUANCE OF SERVICE; AFFILIATE)	
AGREEMENTS BETWEEN NEW JERSEY-AMERICAN)	
WATER COMPANY AND APPLIED WATER)	
MANAGEMENT, INC.; THE ENTRY OF ADMINISTRATIVE)	
AND JUDICIAL CONSENT ORDERS TO VARIOUS)	
PARTIES; AND THE CONVERSION OF INTERIM)	
RATES TO FINAL RATES)	BPU DOCKET NO. WM08070464

(SERVICE LIST ATTACHED)

BY THE BOARD:

On July 2, 2008, Joint Petitioners, New Jersey-American Water Company, Inc. (New Jersey American or NJAW) and the Valley Road Sewerage Company (Valley Road or VRS), collectively, the Joint Petitioners, filed a petition with the Board of Public Utilities (Board), pursuant to N.J.S.A. 48:2-14, and 48:3-7, requesting that the Board approve the sale of certain assets of Valley Road to NJAW and other matters for which approval is required. Specifically, NJAW is seeking to: (1) acquire certain assets of Valley Road; (2) receive a franchise extension and municipal consent of Tewksbury Township to provide service in Tewksbury; (3) discontinue service by Valley Road; (4) receive Board approval of certain agreements between NJAW and Applied Water Management, Inc., (Applied) related to the design, construction, operation and maintenance of improvements to the Valley Road system; (5) adopt administrative and judicial consent Orders to various parties; and (6) to make permanent the current interim rates.

BACKGROUND/PROCEDURAL HISTORY

NJAW, a corporation of the State of New Jersey, is a regulated public utility providing water and wastewater service to approximately 623,800 customers in portions of the following counties: Atlantic, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union and Warren. NJAW operates and maintains potable water production, treatment, storage, transmission and distribution systems for the purpose of furnishing potable water for residential, commercial, industrial and governmental users in its service territory; and owns, operates and maintains collection and pumping systems for the purpose of furnishing wastewater service for residential, commercial, industrial and governmental users in its service territory. NJAW provide wastewater services in three distinct service areas located in the City of Ocean City, Cape May County, in a portion of Lakewood Township, Ocean County, and in a portion of Howell Township, Monmouth County. There are also separate wastewater rates for each of the three wastewater districts.

Valley Road is a public utility of the State of New Jersey subject to the jurisdiction of the Board. The relevant portions of the long and complex procedural history of this matter are set forth below. Valley Road provides sewerage treatment services to approximately 105 residential customers in the Pottersville section of the Township of Tewksbury, Hunterdon County (Pottersville), pursuant to the authority granted by the Board. Valley Road has been operated under a receivership since May 16, 1995, pursuant to Court Order.

Applied is the corporate parent of Applied Wastewater Management (AWWM), a regulated public utility organized and operating under the laws of the State of New Jersey. AWWM was granted an Initial Tariff by the Board on April 13, 1989. AWWM serves 11 discrete systems in New Jersey, serving approximately 2,900 wastewater and 300 water customers. Applied and AWWM have extensive experience in designing, building, operating and maintaining water and wastewater systems in New Jersey.

By Order dated May 16, 1995, the Superior Court of New Jersey, Chancery Division, Somerset County, in Docket No. SOM-C-12052-94, appointed Mr. Robert G. Goode, Esq., of the law firm of Arturi, D'Argenio, Guaglardi & Meliti, LLP, to be the receiver of Valley Road (Receiver). On March 3, 1998, in Docket No. WR9208046, the Board established an annual sewer rate of \$570.00 for service, effective on and after April 1, 1998.

The Receiver operating Valley Road has been actively seeking a buyer for the assets of Valley Road without success. The Board and other concerned parties have previously determined that continuing to operate the Valley Road system as an independent entity would constitute an extreme hardship to the Receiver, would be contrary to the interests of the customers, the Township of Tewksbury and the public interest at large, and would have an adverse impact upon the State as a whole, because the Valley Road system is currently operating out of compliance with various environmental laws and regulations. The Valley Road system needs significant upgrades in order to come into compliance with the New Jersey Department of Environmental Protection (DEP) requirements. Specifically, the Valley Road system has not consistently met the effluent limitations contained in its Discharge Surface Water (DSW) permit. The Valley Road system has violated the effluent limitations for the following parameters: Biochemical Oxygen Demand (loading, concentration and percent removal); Total Suspended Solids (loading, concentration and percent removal); Ammonia Nitrogen (concentration and loading); Fecal Coliform (concentration); and Dissolved Oxygen (concentration).

On March 14, 2002, by consent order, the Court authorized the Receiver to convey to the Hillsborough Township Municipal Utilities Authority (HTMUA) those utility assets of Valley Road located in Hillsborough Township. State of New Jersey, Board of Public Utilities v. Valley Road Sewerage Company, Dkt. No. SOM-C-12052-94, (Ch. Div. 2002) (Consent Order). These assets were conveyed to the HTMUA on or about April 1, 2002, in accordance with the Consent Order.

By Order dated May 25, 2004, the Board approved a municipal consent granted by Tewksbury to AWWM, authorizing AWWM to provide wastewater services to the Pottersville section. The Board also approved the acquisition of certain assets of Valley Road by AWWM.¹

On October 6, 2006, Valley Road filed a petition, pursuant to N.J.S.A. 48:2-21.1, seeking "emergent interim rate relief" in the amount of \$161,172 over current revenues of \$59,850, subject to refund. The proposed emergent rate relief would increase the annual rate for wastewater services per residential dwelling from the current rate of \$570 per year to \$2,105 per year, an increase of \$1,535 per year or 260%, payable quarterly in advance.

On April 10, 2007, a public hearing was scheduled in the Valley Road service area at 6:30 pm, at the Tewksbury Elementary School, 109 Fairmount Road, Tewksbury, New Jersey. This public hearing was subsequently adjourned. A further public hearing was scheduled in this matter and held on May 2, 2007, at the same location and time, and presided over by Legal Specialist Joseph Quirolo, Esq. This public hearing was noticed by Tewksbury via individual notices to each of the Valley Road customers. Approximately 35 people attended the hearing.

By Board Order dated May 15, 2007, the Board authorized an interim rate increase in the amount of \$41,172 or 68.79% over current revenues of \$59,850. The Board, in its May 15, 2007 Order, granted Valley Road interim rate relief for a six month period from the May 15, 2007, Order to November 8, 2007. The interim rate established was \$962.11 per year.

By Board Order dated October 25, 2007, the Board authorized a further extension of the interim rate for a six month period from November 8, 2007, to May 8, 2008.

By Board Order dated April 14, 2008, the Board authorized a further extension of the interim rate for an additional six month period to November 8, 2008.

On July 22, 2008, a hearing was conducted before the Honorable Harriet Derman, Presiding Judge, Superior Court of New Jersey, Chancery Division, Somerset County. At that hearing, the Court approved the Consent Order (Docket Nos. C-12052-94 and HNT-C-14004-07) transferring certain assets of Valley Road Sewerage Company located in Tewksbury Township to New Jersey-American Water Company and authorized the Receiver to take all necessary actions to dissolve Valley Road and execute all documents necessary to effectuate the terms of the Consent Order. At that hearing, the Receiver stated that the Consent Order would not take effect without approval of the Board.

¹ In the Matter of the Joint Petition of Applied Wastewater Management, Inc., and Valley Road Sewerage Company for Approval of (1) Municipal Consent by the Township of Tewksbury, Hunterdon County, New Jersey; (2) Acquisition of Certain Assets of the Valley Road Sewerage Company Located within the Proposed Service Area; (3) For Approval of an Increase in Rates for Service charged to Customers located within the area covered by the Municipal Consent; and (4) For approval of Discontinuance of Service, BPU Docket No. WE03100807 (May 25, 2004).

On July 28, 2008, a publicly noticed, municipal consent public hearing was conducted at the Board's Newark office by Legal Specialist Joseph Quirolo, Esq. Representatives of NJAW, the Division of Rate Counsel, the Township of Tewksbury and Board Staff appeared at the hearing.

Rate Counsel did not submit written comments to the Board, however by virtue of executing the Judicial Consent Order it did not oppose the request by NJAW for a franchise extension and municipal consent within Tewksbury Township to provide service in Tewksbury.

The Township of Tewksbury submitted comments with respect to the petition filed by the Joint Petitioners stating that the customers of Valley Road should have the right to all applicable due process protections available in the event a further adjustment of rates is sought.

On July 29, 2008, the DEP provided the results of a soil test associated with a Site Investigation. The results of that test indicate that the contaminants at the site, if any, fall below the applicable Soil Cleanup criteria. As such, no action is being required by DEP on the site.

THE TRANSACTION

As described more fully in the Asset Purchase Agreement (the Agreement, Attachment A to the Petition) and the Judicial Consent Order (Consent Order, Attachment B to the Petition) NJAW will acquire certain assets of Valley Road, receive municipal consent from the Tewksbury to provide service in Tewksbury, seek Board approval to operate those assets in the existing Valley Road service territory within Tewksbury and seek Board approval of certain contracts related to the design, construction, operation and maintenance of improvements to the Valley Road system. Valley Road will be granted approval to discontinue wastewater service.

With respect to the Receivership of Valley Road, the parties seek Board approval for the termination of the Receivership without further liability of the Receiver, and Board approval of certain fees to be paid to the Receiver as well as the dissolution of Valley Road.

Consideration for the purchase of Valley Road is set forth in the Agreement. Specifically, NJAW agrees to pay to Valley Road, at closing, the amount of one dollar, (\$1.00) plus two hundred thousand dollars (\$200,000) in transaction costs. Under the terms of the Agreement, Valley Road has agreed to sell, and NJAW has agreed to purchase, all of Valley Road's rights, title and interest, in real property and personal property and assets of every kind, nature and description, constituting or comprising Valley Road as defined in the Agreement, subject to satisfaction of all the approvals and fulfilling all other conditions as set forth in the Agreement.

The Agreement is conditioned upon, among other things, the Joint Petitioners obtaining a Final Order of the Board approving the transaction. With respect to the other Board approvals, the Joint Petitioners agree upon the following conditions that must be satisfied:

- 1 Approval of the Agreement by this Board;
2. Approval of the Municipal Consent Ordinance of Tewksbury Township, (Attachment F to the Petition) granting NJAW consent to operate as defined therein;

3. Approval of the Applied Operating and Maintenance (Attachment C to the Petition) (O&M) agreement and the Design and Build (Attachment D to the Petition) (D-B) Agreement;
4. Approval of the interim rates of Valley Road as final rates, (Attachment E to the Petition) and not subject to refund;
5. Approval of fees in the amount of \$200,000 to the firm of Arturi, D'Argenio, Guaglardi & Meliti, LLP (Receiver) and certain fees to vendors of Valley Road;
6. The discharge of the Receiver without further liability or obligations;
7. Approval of the final rate to be paid by the customers of Valley Road to NJAW; and
8. Discontinuance of service by Valley Road.

With respect to the Judicial Consent Order, the Joint Petitioners request that the Board accept the Superior Court of New Jersey, Chancery Division, Somerset County final Judicial Consent Order (Attachment B to the Petition).

With respect to the Administrative Consent Order (ACO), NJAW will operate the Valley Road assets under the ACO to allow NJAW sufficient time to complete the improvements needed to bring the Valley Road system into compliance.

At closing, NJAW will pay the transaction costs in the amount of \$200,000 to the firm of Arturi, D'Argenio, Guaglardi & Meliti, LLP for legal, receiver and other fees and costs in connection with the Receivership, up to \$12,000 in outstanding fees to Hatch Mott MacDonald (Hatch Mott) for operator services, and up to \$8,000 to Withum, Smith and Brown for accounting services.

NJAW intends to invest all reasonable and prudent capital necessary to bring Valley Road into compliance with all applicable permits, regulations and laws, and will apply to the Board for recovery of those investments as part of a base rate proceeding.

DISCUSSION AND FINDINGS

EVALUATION OF THE TRANSACTION

The parties assert that the transaction will have no adverse impact on NJAW. NJAW will continue to operate under its existing Board approved tariffs and rate structures, until such time as such tariffs and rate structures are revised in accordance with New Jersey law. The Transaction will cause no material changes in the balance sheet or financial position of NJAW. All of the outstanding debts of NJAW will continue to be liabilities and obligations of NJAW.

Likewise, the parties assert that NJAW will continue to provide safe, adequate and proper service at just and reasonable rates, in fulfillment of its obligations as set forth under New Jersey law. The Transaction will have no adverse impact on NJAW's present or future service levels.

Furthermore, claim the parties, the Transaction will benefit the customers of Valley Road. The Valley Road customers will become part of a much larger customer base, over which the costs of major infrastructure improvements may be spread, reducing the risk that a small customer base faces in the occurrence of a major event that requires significant investments. These customers will benefit from having the system owned by a utility with expertise in technical, financial and managerial matters.

The Transaction will not adversely impact the employees currently serving Valley Road, as there are no employees.

There is no relationship between the parties other than the transferor and transferee. In light of the fact that a substantial amount of time has passed since the Valley Road Assets have been within the control of the Receiver, and the related expenses to be incurred in bringing the Valley Road assets into the condition necessary to provide safe, adequate and proper service, it is unlikely that another suitable purchaser could be located under more favorable terms and conditions to Valley Road and its customers.

The proposed Transaction is an arms-length transaction between Valley Road and NJAW. The consideration represents only the payment of certain outstanding expenses of Valley Road and the parties believe that such consideration is fair and reasonable.

BENEFITS OF THE PROPOSED TRANSACTION

All of the parties agree that the proposed Transaction will promote the public interest and result in the positive benefits as described above. The Valley Road customers will benefit from becoming part of the largest water utility in the country whose business is to provide high-quality water and wastewater services to its customers and which desires to provide the Valley Road customers with the same high-quality water service enjoyed by its other customers.

The financial resources and backing of NJAW and its affiliates, including AWW and AWWM, will, according to the parties, be a benefit to the customers because the access to capital markets provided by these entities will aid in the cost-effective replacement of infrastructure. Accordingly, all parties agree, NJAW has the expertise to operate the Valley Road system.

Upon completion and approval of the Transaction and upon approval of the D-B Agreement, NJAW expects to commence the capital improvements required to bring the Valley Road system into compliance. Upon approval of the AWM O & M Agreement, NJAW will operate the Valley Road Assets under the protective ACO with the DEP to allow NJAW sufficient time to complete the improvements needed to bring the Valley Road system into compliance.

As part of the NJAW system, the needs of the Valley Road customers will be satisfied by a large public utility with the financial resources and expertise to assure that safe, adequate and proper wastewater service will be provided including the following:

- a. The Valley Road customers will benefit from 24/7 access to NJAW's customer service call centers to resolve customer service issues which the current Valley Road customers do not have.
- b. The Valley Road customers will have access to NJAW's customer payment assistance programs.

- c. The Valley Road customers will receive benefits of industry best practices in the areas of planning, research, environmental compliance, risk management, operations and service delivery and management.

UTILIZATION OF CURRENT NEW JERSEY AMERICAN DEPRECIATION RATES FOR THE VALLEY ROAD ASSETS

Upon consummation of the Transaction, for financial accounting purposes only, NJAW intends to apply to the transferred Valley Road assets the depreciation rates currently in effect for NJAW. Those depreciation rates were approved by this Board in BPU Docket No. WR94030049 and are currently under review in BPU Docket No. WR08010020.

After a careful review of the record in this proceeding, and based upon the discussion above, the Board HEREBY FINDS that the proposed transaction is in accordance with law and is not contrary to the public interest. The proposed transaction is reasonable and appropriate and, in conjunction with existing statutes, provides the Board with sufficient means to properly regulate the operations of Valley Road and NJAW. The proposed transaction will benefit the customers of Valley Road by: (a) combining resources and expertise, such as sharing best operating practices; and (b) promoting compliance with federal and state regulatory requirements regarding wastewater.

Accordingly, the Board having considered the record in this matter HEREBY ACCEPTS:

1. The Asset Purchase Agreement for the sale of the Valley Road Sewerage Company assets to New Jersey – American Water Company, Inc.;
2. The Municipal Consent Ordinance of Tewksbury Township, granting NJAW consent to operate as defined therein;
3. The AWM Operating and Maintenance agreement and the Design and Build Agreement;
4. The request to make permanent the interim rates of Valley Road as final rates, and that no over-recovery and that no refund is due Valley Road's customers;
5. The fees in the amount of \$200,000 to the firm of Arturi, D'Argenio, Guaglardi & Meliti, LLP and certain fees to vendors of Valley Road;
6. The discharge of the Receiver without further liability or obligations;
7. The final rate to be paid by the customers of Valley Road to NJAW; and
8. The discontinuance of service by Valley Road.

The Board FURTHER APPROVES the request to utilize the depreciation rates of New Jersey – American Water Company, Inc., for the Valley Road assets for financial accounting purposes. As such, the Board HEREBY ACCEPTS the Judicial Consent Order as entered into by Honorable Harriet Derman, Superior Court of New Jersey, Chancery Division, Somerset County is and the Administrative Consent Order as entered into by the Joint Petitioners and the New Jersey Department of Environmental Protection.

The Board HEREBY ORDERS that the approval of the various transaction are subject to the following provisions:

- a) This Order shall neither effect nor in any way limit the exercise of the authority of this Board or of this State in any future petition or in any proceedings with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or in any other matters affecting NJAW.
- b) In an appropriate proceeding, NJAW shall have the burden of demonstrating whether, and to what extent, any of the costs associated with this proceeding shall be allocated to ratepayers. Approval of the municipal consent does not include authorization to include in rate base the specific assets that will be transferred as a result of the new service territory.
- c) Approval of this municipal consent ordinance does not constitute Board approval of any costs or expenses associated with this proceeding. Any determination as to the appropriateness or reasonableness of the costs and expenses related to the franchise, including but not limited to, cost of construction, contributions in aid of construction, the cost of connection, or any related capital improvements, and the allocation of such costs and expenses, shall be made in an appropriate proceeding.
- d) NJAW shall apply to the acquired assets the current rates of depreciation in effect for New Jersey American Water, Inc.'s similar utility plant.**
- e) NJAW shall inform the Board, in writing, of the date of closing of the asset purchase transaction within 20 days of closing and shall file with the Board final journal entries within 60 days of closing, reflecting the actual journal entries used at the time of closing.
- f) NJAW shall file an updated Territory Served page within fifteen (15) days of the date of this Order incorporating the Pottersville section of Tewksbury Township.
- g) The Joint Petitioners shall support the efforts of the Board and the Division of Rate Counsel to make utility service affordable to all customers, including low-income and financially distressed customers. The Joint Petitioners will continue to exercise innovation in tariff design and to work with the Board Staff and the Division of Rate Counsel to accomplish these goals.
- h) The Joint Petitioners shall use their best efforts to maintain all applicable water and wastewater quality standards and to maintain or improve water and wastewater standards. The Joint Petitioners shall maintain adequate resources to continue to be responsive to inquires from customers and regulators.
- i) The proposed transaction shall not affect the ability of NJAW to provide safe, adequate and proper service in fulfillment of its obligations under New Jersey law. As part of NJAW, Valley Road, by virtue of the greater capital resources of its controlling entities, will be better positioned to meet future demands and to ensure that high quality service is maintained.

j) New Jersey American Water Company, Inc. shall submit tariff pages reflecting the terms of this Order within (10) ten days from the effective date of this Order.

The effective date of this Order is as dated below:

DATED: 8/1/08

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

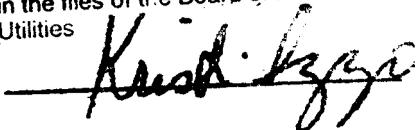

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF THE JOINT PETITION OF NEW JERSEY - AMERICAN WATER COMPANY, INC., AND THE VALLEY ROAD SEWERAGE COMPANY FOR, AMONG OTHER THINGS, APPROVAL OF AN ASSET PURCHASE AGREEMENT; FRANCHISE EXTENSION AND MUNICIPAL CONSENT ORDINANCE; DISCONTINUANCE OF SERVICE; AFFILIATE AGREEMENTS BETWEEN NEW JERSEY-AMERICAN WATER COMPANY AND APPLIED WATER MANAGEMENT, INC.; THE ENTRY OF ADMINISTRATIVE AND JUDICIAL CONSENT ORDERS TO VARIOUS PARTIES; AND THE CONVERSION OF INTERIM RATES TO FINAL RATES

BPU DOCKET NO. WM08070464

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